

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7850 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgement?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 : No

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HEIRS OF BABUBHAI HATHIBHAI

Versus

RAJANIKANT R PATEL

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Appearance:

MR GR SHAIKH for Petitioners

MR RA PATEL for Respondent No. 1

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CORAM : MR.JUSTICE R.A.MEHTA

Date of decision: 18/03/98

ORAL JUDGEMENT

There is no dispute that widow Samjuben was the tenant of the suit land. The question is, after the death of Samjuben on 20th March 1970, who is the tenant? There are two proceedings. In both the proceedings, the present petitioners, Nandubhai Balubhai and Manubhai Balubhai are claiming the tenancy. In the first proceeding, they are claiming the tenancy as successor-in-title of Samjuben as her grand-sons. That dispute is pending before the Gujarat Revenue Tribunal. The Mamlatdar and Agricultural Lands Tribunal has held

under Section 32-F that they cannot be held to be fresh tenants of the disputed land.

2. In the said proceeding, the tenancy is claimed as fresh tenancy, after the death of Samjuben. That claim is also negated. However, in the judgment dated 18th December 1989, the Gujarat Revenue Tribunal has observed as follows:

"The applicant claims to be the son of the deceased Samjuben and in his evidence on 20.6.1976 the opponent has stated that 'Babubhai is not my tenant, but his mother Samjuben who is my tenant'. There is therefore some force in the applicant's contention that he is the son of the deceased tenant Samjuben, though she became a child widow. It is also probable likely that the applicant may be a tenant in his own right."

It was the case where the proceeding was taken for summary eviction under Section 84 of the Tenancy Act on the basis of the order passed under Section 32-F of the Act.

3. In the present proceeding, the question is, whether the petitioners are the fresh tenants or not, after the death of Samjuben. This claim is negated on the ground that the land was a fragment one and there could not have been claim in respect of the same and for that purpose, Revenue Entry No.1317 of Mamlatdar and Agricultural Lands Tribunal is relied upon. One of the contentions which was raised before the Mamlatdar and Agricultural Lands Tribunal was that, the said question was never raised before the authorities below, and, therefore, there could not be any evidence. However, that was allowed to be raised.

4. Therefore, the review application was filed before the Gujarat Revenue Tribunal, with a view to show that the land was not a fragment, however, that was rejected on the ground that the additional evidence could have been produced earlier.

5. The order of the Gujarat Revenue Tribunal shows that the tenancy in respect of the same land between the same parties is pending and there are two different proceedings claiming tenancy of the same land. One is as the successor-in-title of the deceased widow Samjuben and other is with regard to the question of new tenancy after the death of said Samjuben. It would be just and in the interest of justice that the Gujarat Revenue Tribunal is

directed to decide comprehensively all questions of tenancy between the same parties, so that there may not be any inconsistent findings. In one proceeding, the Mamlatdar and Agricultural Lands Tribunal has held that, in absence of succession certificate, the claim of successor-in-title cannot be accepted. The Gujarat Revenue Tribunal, in eviction proceedings says that the applicant claims to be the son of deceased Samjuben it is likely that the applicant may be a tenant in his own right. Therefore, with a view to avoid any inconsistent findings and to have comprehensive view, it is necessary to set aside the impugned order of the Gujarat Revenue Tribunal in this matter and remand the matter to the Tribunal with a direction to hear this matter along with the other matter of the present petitioners. There is another reason for remand, because the Tribunal has held that no additional evidence can be allowed in review application unless the applicant shows why such evidence could not be produced earlier. In view of the fact that the question of fragment was not an issue before the lower authorities and was raised only at the time of hearing before the Tribunal, the petitioners can be said to have sufficient cause for not producing the evidence at an earlier stage. Therefore, the application for additional evidence is required to be granted and the same is hereby granted and the Tribunal shall decide the matter afresh in accordance with law on the basis of all evidence.

6. In the result, this Special Civil Application is allowed. The impugned judgment and orders of the Gujarat Revenue Tribunal in Revision Application No. TEN.B.A.227 of 1983 dated 25th November 1988 and the judgment and order under review in Review Application No. TEN.C.A. 5 of 1989 dated 16th June 1989 at Annexures.O & D respectively are quashed and set aside and the Tribunal is directed to decide these matters afresh in accordance with law and along with the proceeding pending before the Gujarat Revenue Tribunal between the same parties. Rule is made absolute accordingly. No costs.

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